

1 Plaintiff's First and Fourth Amendment constitutional rights,
2 rights under 42 U.S.C. § 1983, and Nevada state common law claims
3 of wrongful arrest, assault, battery, and excessive force.

4 On June 9, 2005, Defendant Hoffenfeiken filed a Motion for
5 Summary Judgment (#29). On July 13, 2005, Plaintiff filed a
6 response (#36) and Defendant replied (#39) on July 25, 2005. For
7 the reasons stated below, Defendant's motion will be **granted**.

8 **II. Statement of Facts**

9 We consider the facts taken in a light most favorable to the
10 Plaintiff in deciding this summary judgment motion.

11 On September 27, 2003, near the end of his graveyard shift at
12 approximately 5:30 a.m., Deputy Sheriff Hoffenfeiken was driving
13 northbound on Pyramid Highway near the intersection with Spring
14 Ridge Drive in Sparks, Nevada when he spotted a car speeding in the
15 opposite direction going southbound on Pyramid Highway. Deputy
16 Hoffenfeiken turned his patrol car around to pursue the speeding
17 car and activated his patrol car lights. Upon seeing the patrol
18 car lights, Martinez pulled over at the first available place he
19 could turn off the highway. This was the Raley's commercial center
20 on the corner of McCarran Boulevard and Pyramid Highway.

21 After Plaintiff pulled over and Hoffenfeiken pulled up behind
22 him, Hoffenfeiken walked up to Plaintiff's car and made initial
23 contact with Plaintiff to ascertain Plaintiff's identity by way of
24 his driver's license and vehicle registration information.
25 Hoffenfeiken informed Plaintiff he had been stopped for speeding.
26 Plaintiff handed over his Nevada state driver's license which had
27 his Social Security number, address, and date of birth on it and
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1 presented Hoffenfeiken with his vehicle registration. He then
2 searched for his insurance information while Hoffenfeiken went back
3 to his patrol car to verify the information Martinez had given him.
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5 Back at his patrol car, Hoffenfeiken contacted the dispatcher
6 on his car radio to get more information on Plaintiff via a routine
7 warrants and wants check. The dispatcher informed Hoffenfeiken
8 that Martinez was a possible match for a fugitive warrant out of
9 California for failure to appear for a DUI drug charge. The
10 dispatcher informed Hoffenfeiken that the information Hoffenfeiken
11 had given them matched for name (except for the middle name Campos
12 not Callejas) and date of birth but that the social security number
13 was different. The dispatcher gave Hoffenfeiken further
14 information to try to determine if Martinez was a match: the wanted
15 Martinez had four scars on his right arm and a scar near his eyes.

16 Hoffenfeiken returned to Plaintiff's car where he observed
17 that Plaintiff had the identifying scars. Hoffenfeiken went back
18 to his patrol car and told the dispatcher that the scars were a
19 match. Dispatch told Hoffenfeiken to call the National Crime
20 Information Center ("NCIC"). NCIC had the same information about
21 the scars as the dispatcher. NCIC had additional information: that
22 the wanted Martinez had an old California address of 876 East 43rd
23 Street in South Central Los Angeles. NCIC informed Hoffenfeiken
24 that they would contact Parole and Probation in California to get
25 them to email a picture of the wanted Martinez. This would require
26 Hoffenfeiken to take Plaintiff to the jail as he did not have email
27 capacity in his patrol car.
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1 Hoffenfeiken then returned to Plaintiff's car and ordered
2 Plaintiff to get out and go to the rear of the vehicle.
3 Hoffenfeiken asked Plaintiff if he was Isidro Callejas Martinez to
4 which Plaintiff replied he was not. Plaintiff was asked his old
5 address in California and responded, "876 East 43rd Street, South
6 Los Angeles." Plaintiff was not told the basis for which he was
7 being detained however he insisted that Hoffenfeiken was mistaken,
8 saying "that's not me" and "I don't do drugs and drive."
9 Hoffenfeiken decided to take Plaintiff into custody due to the
10 number of matched identifiers associated with the California
11 warrant. Although he did not resist arrest, Plaintiff was
12 handcuffed and Hoffenfeiken placed him in the back of the patrol
13 car. Hoffenfeiken then transported Plaintiff to the jail.
14 Plaintiff grumbled in the car that the only reason he was being
15 arrested was because he was Hispanic. Upon arrival at the jail,
16 Hoffenfeiken checked the email photo from the California Parole and
17 Probation Office. Hoffenfeiken determined the photo was a match.
18 Hoffenfeiken then learned of two other fugitive warrants for the
19 wanted Martinez. At that point, Hoffenfeiken left the jail at 7:27
20 a.m., his shift having terminated.

21 This was not the first time that Plaintiff had been mistaken
22 for Isidro Callejas Martinez. In 2003, Martinez's paychecks were
23 garnished by the Monterey County Department of Child Services
24 because of Callejas' apparent default on child support payments.
25 In trying to buy a home in 2003, and a truck in 2004, Plaintiff
26 learned through a lending institution that Callejas had an address
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1 listed in Los Angeles that was the same as the house that Plaintiff
2 owned on 876 East 43rd Street.

3 In 2002, Washoe County Deputy Sheriff Todd Hill had pulled
4 Plaintiff over and accused him of being Callejas. Hill detained
5 Plaintiff for over two hours and searched his arms, stomach and
6 back looking for the tattoos that Callejas was purported to have.
7 Plaintiff was eventually released and Plaintiff took Hill's
8 business card.

9 After that time, Plaintiff was pulled over approximately seven
10 times and each time, the officers examined his body searching for
11 tattoos and each time they released him without charging him. Due
12 to the continued harassment, Plaintiff has sought to resolve the
13 issue of his identity. He obtained a letter from Child Services in
14 Monterey County, California; he requested printouts from the Nevada
15 Department of Motor Vehicles; and he has met with Rusty Snyder,
16 Deputy Community Liaison for the Washoe County Sheriff's
17 Department. Snyder assured Plaintiff that such mishaps would not
18 happen in the future and gave Plaintiff his business card.
19 However, after the meeting, Plaintiff was again pulled over by the
20 Sparks Police Department and he was searched.

21 After Hoffenfeiken deposited Plaintiff at the jail, Plaintiff
22 was placed in a small room and made to face the wall while his
23 hands were handcuffed behind him. He complained to the officers
24 (Hoffenfeiken had already left and Plaintiff had been passed over
25 to other officers) that it was painful for him to stay in this
26 position as he suffered chest pains. The officer told him he
27 didn't care and when Plaintiff attempted to shift his position, the
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1 officer told him not to move. The officers began by asking what
2 Plaintiff's real name was, where he had bought his social security
3 card, and if he had been drinking. They gave him a breathalyzer
4 test and took his photograph. Plaintiff attempted to explain the
5 situation of mistaken identity and that he had already met with
6 Snyder, but the officers did not give him a chance to explain.

7 The officers took Plaintiff into a smaller room and told him
8 to kneel before a bench and place his head on the bench. One
9 officer took off the handcuffs while the other used his foot to
10 hold Plaintiff's head to the bench. One officer took one hand and
11 another officer took the other and they both pulled and twisted his
12 hands away from his body. At the same time, the fourth officer
13 took his legs and crossed them. The two officers continued to lift
14 Plaintiff above the ground two feet and then to drop him on the
15 concrete. They continued this treatment four or five times while
16 insisting that Plaintiff admit he was Callejas. If true, this
17 conduct was nothing less than reprehensible and despicable.

18 Plaintiff stayed in the small room for approximately four
19 hours. He was then taken by another officer for more photographing
20 and fingerprinting. He was visited by a nurse at 1:30 p.m. After
21 that more photographs and fingerprints were taken. After waiting
22 again for an hour, Plaintiff was given a prison uniform and tennis
23 shoes, a shot, was made to shower, and then was sent to a cell.

24 At 4 or 5 p.m., he was sent to a reception area where he spoke
25 to an officer. Plaintiff spoke again of his problems of identity.
26 Shortly after this meeting, he was released. His wife and children
27 had been waiting at the jail, but were not given any information as
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1 to why Plaintiff had been detained. They were told that Plaintiff
2 was going to be deported because he was illegal.

3 Plaintiff's traffic violation charge was dismissed when, at
4 trial, Plaintiff produced proof of insurance.

5 **II. Discussion**

6 **A. Summary Judgment Standard**

7 Summary judgment allows courts to avoid unnecessary
8 trials where no material factual dispute exists. Northwest
9 Motorcycle Ass'n v. U.S. Department of Agriculture, 18 F.3d 1468,
10 1471 (9th Cir. 1994). The court must view the evidence and the
11 inferences arising therefrom in the light most favorable to the
12 nonmoving party, Bagdadi v. Nazar, 84 F.3d 1194, 1197 (9th Cir.
13 1996), and should award summary judgment where no genuine issues of
14 material fact remain in dispute and the moving party is entitled to
15 judgment as a matter of law. Fed. R. Civ. P. 56©. Judgment as a
16 matter of law is appropriate where there is no legally sufficient
17 evidentiary basis for a reasonable jury to find for the nonmoving
18 party. Fed. R. Civ. P. 50(a). Where reasonable minds could differ
19 on the material facts at issue, however, summary judgment should
20 not be granted. Warren v. City of Carlsbad, 58 F.3d 439, 441 (9th
21 Cir. 1995), cert. denied, 116 S.Ct. 1261 (1996).

22 The moving party bears the burden of informing the court
23 of the basis for its motion, together with evidence demonstrating
24 the absence of any genuine issue of material fact. Celotex Corp.
25 v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has
26 met its burden, the party opposing the motion may not rest upon
27 mere allegations or denials in the pleadings, but must set forth
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1 specific facts showing that there exists a genuine issue for trial.
2 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).
3 Although the parties may submit evidence in an inadmissible form--
4 namely, depositions, admissions, interrogatory answers, and
5 affidavits--only evidence which might be admissible at trial may be
6 considered by a trial court in ruling on a motion for summary
7 judgment. Fed. R. Civ. P. 56(c); Beyene v. Coleman Security
8 Services, Inc., 854 F.2d 1179, 1181 (9th Cir. 1988).

9 In deciding whether to grant summary judgment, a court must
10 take three necessary steps: (1) it must determine whether a fact is
11 material; (2) it must determine whether there exists a genuine
12 issue for the trier of fact, as determined by the documents
13 submitted to the court; and (3) it must consider that evidence in
14 light of the appropriate standard of proof. Anderson, 477 U.S. at
15 248. Summary Judgment is not proper if material factual issues
16 exist for trial. B.C. v. Plumas Unified Sch. Dist., 192 F.3d 1260,
17 1264 (9th Cir. 1999). "As to materiality, only disputes over facts
18 that might affect the outcome of the suit under the governing law
19 will properly preclude the entry of summary judgment." Anderson,
20 477 U.S. at 248. Disputes over irrelevant or unnecessary facts
21 should not be considered. Id. Where there is a complete failure
22 of proof on an essential element of the nonmoving party's case, all
23 other facts become immaterial, and the moving party is entitled to
24 judgment as a matter of law. Celotex, 477 U.S. at 323. Summary
25 judgment is not a disfavored procedural shortcut, but rather an
26 integral part of the federal rules as a whole. Id.

1 **B. 1983 Claim of Excessive Force**

2 Plaintiff claims that Deputy Hoffenfeiken applied excessive
3 force against him because Hoffenfeiken handcuffed him before
4 bringing him to the jail.¹ The act of handcuffing is the basis for
5 the claim of excessive force.

6 Determining whether the force used to effect a particular
7 seizure is "reasonable" under the Fourth Amendment requires a
8 careful balancing of "the nature and quality of the intrusion on
9 the individual's Fourth Amendment interests" against the
10 countervailing governmental interests at stake. Graham v. Connor,
11 490 U.S. 386, 396 (1989) (internal citations omitted). Supreme
12 Court jurisprudence has long held that the right to make an arrest
13 or investigatory stop necessarily carries with it the right to use
14 some degree of physical coercion or threat thereof to effect it.
15 Id. The reasonableness of the force used requires a case-by-case
16 determination of the severity of the crime at issue, whether the
17 suspect poses an immediate threat to the safety of the officers or
18 to others, and whether he is actively resisting arrest or
19 attempting to evade arrest by flight. Id. (citing Tennessee v.
20 Garner, 471 U.S. 1, 8-9 (1984)).

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23 ¹Plaintiff's claim for excessive force used in his detention in
24 the jail can only be asserted against the other officers as solid
25 evidence has been presented and Plaintiff has admitted that
26 Hoffenfeiken was not involved in the treatment of Plaintiff in the
27 small room with the other four officers at the jail.

1 The reasonableness of the use of the force is to be judged
2 from the perspective of a reasonable officer at the scene, rather
3 than with the 20/20 vision of hindsight. Id. "The calculus of
4 reasonableness must embody allowance for the fact that police
5 officers are often forced to make split-second judgments in
6 circumstances that are tense, uncertain, and rapidly evolving-about
7 the amount of force that is necessary in a particular situation."
8 Id.

9 The reasonableness inquiry in an excessive force case is an
10 objective one: the question is whether the officer's actions are
11 "objectively reasonable" in light of the facts and circumstances
12 confronting them without regard to their underlying intent or
13 motivation. Id. (citing Stocc v. United States, 463 U.S. 128, 137-
14 39 (1978)).

15 Plaintiff cites US v. Bravo, 295 F.3d 1002 (9th Cir. 2002) for
16 the proposition that use of handcuffs is an unreasonable use of
17 force. However, the factual scenario of Bravo differs greatly from
18 the facts here and the holding of Bravo does not extend so far as
19 to rule that when a person is not evading arrest, handcuffs cannot
20 be used.

21 Bravo involved the detention and investigatory search of
22 Bravo's toolbox at the United States border. The question of
23 handcuffing arose when Bravo questioned whether the stop was a
24 "routine" investigation or had converted into a non-routine border
25 arrest. Id., at 1015-17. The issue of "handcuffing" related to
26 whether Bravo had indeed been arrested or whether the officers were
27 still conducting the routine border search. Bravo has nothing to
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1 do with whether the use of handcuffs for detention and transport of
2 a suspect to the jail constitutes excessive force.

3 We therefore again review the factors applicable to whether
4 Defendant Hobbensfeiken's act of handcuffing Plaintiff constituted
5 use of excessive force. First we note that since Plaintiff was
6 already being detained, the use of handcuffs imposed little more
7 force on him than being put into a patrol car, jailed, photographed
8 and fingerprinted. The Supreme Court has held that the imposition
9 of correctly applied handcuffs on someone who is already being
10 lawfully detained is reasonable. Mueller v. Men, 125 S. Ct. 1465,
11 1470 (2005). Here, since, as later discussed, Hoffenfeiken was
12 effecting what reasonably appeared to him to be a lawful arrest and
13 proceeded to lawfully detain the Plaintiff, the use of handcuffs
14 was reasonable.

15 In addition, we note that Hoffenfeiken thought Plaintiff was
16 Callejas for whom an arrest warrant was outstanding on DUI drug
17 charges. Hoffenfeiken thought Plaintiff was a fugitive and had
18 evaded the law before. Therefore, the use of handcuffs to detain
19 Plaintiff during his ride to the jail was reasonable.

20 **C. 1983 Claim of False Arrest/Mistaken Identity**

21 Plaintiff claims that Hobbensfeiken's mistake in identifying
22 him constituted false arrest and violated his Fourth Amendment
23 rights. He claims that because the arrest warrant was for someone
24 else, Plaintiff was unlawfully seized and deprived of his liberty
25 based on the incorrect identification.

26 The Supreme Court has held that the Constitution permits an
27 officer to arrest a suspect without a warrant if there is probable
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1 cause to believe that the suspect has committed or is committing an
2 offense. Devenport v. Alford, 543 U.S. 146, 125 S. Ct. 588, 594
3 (2004). An arrest is supported by probable cause if "under the
4 totality of circumstances known to the arresting officers, a
5 prudent person would have concluded that there was a fair
6 probability that [the defendant] had committed a crime." Beier v.
7 City of Lewiston, 354 F.3d 1058, 1065 (9th Cir. 2004) (quoting Grant
8 v. City of Long Beach, 315 F.3d 1081, 1085 (9th Cir. 2002)).

9 At the time of the arrest, Hoffenfeiken possessed the
10 following information: (1) there was a valid arrest warrant for a
11 Isidro Callejas Martinez from California (2) Plaintiff's name
12 matched but for the fact that Plaintiff's middle name was Callejas
13 instead of Campos (3) Callejas sometimes went by the alias Campos
14 (4) Plaintiff matched Callejas' date of birth (5) Plaintiff matched
15 Callejas for scars on the forearm and near his eye (6) Plaintiff
16 matched height and weight descriptions of Callejas and (7)
17 Plaintiff's address in South Los Angeles matched Callejas.

18 Defendant's citation to Baker v. McCollan, 443 U.S. 137, 140
19 (1979) is directly on point. As Defendant points out, there a case
20 of mistaken identity caused the brother of a criminal to be
21 detained for three days in jail before the police discovered their
22 mistake. Id. The Supreme Court held that because McCollan was
23 arrested pursuant to a valid arrest warrant, there was no
24 Constitutional violation for invalid detention. Id.

25 We find the information cited above to constitute sufficient
26 probable cause to authorize Hoffenfeiken to make the arrest. In
27 addition, we note that such detention and suspicion over
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1 Plaintiff's identity had been reoccurring-several other police
2 officers, bank officials and sellers having questioned Plaintiff's
3 identity. Therefore, disregarding a non-match for Social Security
4 number was not unreasonable in light of the fact that several other
5 police officers had made the same mistake of identity.

6 Plaintiff points to the fact that Hoffenfeiken arrested
7 Plaintiff and took him to the jail despite the fact that
8 Plaintiff's Social Security number was not a match and that he had
9 a valid Nevada state driver's license with him. The Ninth Circuit
10 has held that "knowingly arresting the wrong man pursuant to a
11 facially valid warrant issued for someone else violates rights
12 guaranteed by the Fourth Amendment." Lee v. Gregory, 363 F.3d 931,
13 935 (citing Brown v. Byer, 870 F.2d 975 (5th Cir. 1989)). However,
14 here, Plaintiff has not presented facts upon which we could find
15 that Defendant Hoffenfeiken believed that Plaintiff was not
16 Callejas. Although Plaintiff points to the fact that the Social
17 Security number did not match and that Plaintiff had a valid Nevada
18 state driver's license, Plaintiff overlooks the overwhelming
19 evidence in the other direction to which Hoffenfeiken was privy.
20 Given the number of matches that were evident (including the
21 California address, scars, name, and date of birth) there is no
22 evidence that Hoffenfeiken was arresting and detaining Plaintiff
23 for an unreasonable suspicion that there was an outstanding
24 facially valid warrant for Plaintiff's arrest.²

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26 ²We note that there are cases within the Ninth Circuit where the
27 court has held that mistakes were not reasonable. However, in those
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1 Plaintiff then argues that Hoffenfeiken was unreasonable in
2 his arrest in that he refused to listen to Plaintiff's side of the
3 story and that he ignored the evidence of Snyder's card in his
4 wallet.³ The Ninth Circuit has recently held that "once probable
5 cause to arrest someone is established . . . a law enforcement
6 officer is not 'required by the Constitution to investigate
7 independently every claim of innocence, whether the claim is based
8 on mistaken identity or a defense such as lack of requisite
9 intent.'" Broam v. Bogan, 320 F.3d 1023, 1032 (9th Cir.

10 2002) (quoting Baker v. McCollan, 443 U.S. 137, 145-46 (1979)).
11 Here, although Plaintiff claimed that he was not Callejas and that
12 he did not "do drugs and drive," Defendant Hoffenfeiken, once he
13 had the matches to name, date of birth, scars and address in Los

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15 cases, more than a few identifiers did not match. Here, only one
16 thing did not match Callejas' description and personal information.
17 See Simons v. Marin County, 682 F.Supp. 1463, 1466-67 (N.D. Cal.
18 1987) (mistake was unreasonable where there were different middle
19 names, different ages, and residences in different areas of
20 California).

21 ³We find the evidence that Defendant may have ignored Snyder's
22 business card which was in Plaintiff's wallet unpersuasive. Plaintiff
23 did not alert Hobbenfeiken to this evidence and it is not clear that
24 Hobbenfeiken even noticed the card. In addition, the simple fact that
25 Plaintiff had Snyder's card does not create any issue of fact on any
26 of the elements. Snyder's card could have been in Plaintiff's wallet
27 for a number of reasons.

1 Angeles, had probable cause to arrest Plaintiff and did not need to
2 look further for reasons not to arrest and detain Plaintiff.

3 We therefore find that Plaintiff's claim for false arrest in
4 violation of section 1983 is without merit and summary judgment
5 will be granted on this claim in favor of Defendant.⁴

6 **D. 1983 Custom and Policy**

7 Plaintiff claims that the custom and policy of the Washoe
8 County Sheriff's Department and Washoe County allowed the
9 constitutional violations against Plaintiff to be committed.
10 Plaintiff claims that Washoe County Sheriff's Department and Washoe
11 County knew or should have known that Hoffenfeiken and the other
12 deputies had a history of violence and violation of civil rights
13 and that Washoe County Sheriff's Department and Washoe County
14 failed to adequately train and supervise the deputies.

15 It is unclear how such a claim would apply to Hoffenfeiken and
16 Plaintiff in his Opposition to Summary Judgment has failed to put
17 forth a basis on which we should apply this claim to the Defendant
18 before us. Indeed, even Plaintiff points to the fact that
19 *supervisors* can be held liable for violations of officers if he

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21 ⁴Plaintiff goes on to claim that his further detention in the
22 jail was in violation of his Fourth Amendment rights since the
23 officers could have easily done a simple check to see he was the wrong
24 person. We do not review this claim as it does not relate to
25 Defendant Hoffenfeiken. Since Hoffenfeiken had departed the jail at
26 7:27 a.m. that day, we find that he was not involved in the further
27 detention of Plaintiff.

1 knew of them and failed to prevent them. Here, there is no
2 evidence that Hoffenfeiken was anything other than an employee
3 officer or that he was a supervisor of the other deputies.

4 Therefore, Plaintiff's claim against Hoffenfeiken for
5 deliberate indifference will be dismissed.

6 **E. Equal Protection Claim**

7 Plaintiff claims that he was treated differently in that he
8 was incarcerated because of his ethnicity and national origin. We
9 confine this allegation to the conduct of Defendant Hoffenfeiken
10 for purposes of this motion.

11 In order to prevail on his claim for violation of his equal
12 protection rights, Plaintiff must prove that Hoffenfeiken "acted in
13 a discriminatory manner and that the discrimination was
14 intentional." Bingham v. City of Manhattan Beach, 341 F.3d 939,
15 948 (9th Cir. 2003) (quoting Reese v. Jefferson Sch. Dist. No. 14J,
16 2098 F.3d 736, 740 (9th Cir. 2000)).

17 The evidence that Plaintiff has presented to prove this claim
18 against Defendant Hoffenfeiken is that Hoffenfeiken stated in his
19 deposition that Plaintiff was born in Mexico, as written on his
20 driver's license, and that Plaintiff had an ID card from Mexico.
21 Plaintiff seems to think that since both of these items were false
22 and because Hoffenfeiken remembered these details falsely that this
23 proves he acted in detaining and arresting Plaintiff on the basis
24 of intentional discrimination.

25 Essentially Plaintiff argues that because Hoffenfeiken made
26 false statements about Plaintiff's national origin, that these
27 statements are enough to raise an inference of racial

1 discrimination. We disagree. To avoid summary judgment, Plaintiff
2 must be reminded that he must "produce evidence sufficient to
3 permit a reasonable trier of fact to find by preponderance of the
4 evidence that [the decision] was racially motivated." Keyser v.
5 Sacramento City Unified Sch. Dist., 265 F.3d 741, 754 (9th Cir.
6 2001) (quoting FDIC v. Henderson, 940 F.2d 465, 473 (9th Cir.
7 1991)).

8 Plaintiff overlooks, again, the overwhelming evidence that
9 Defendant Hoffenfeiken was faced with when he decided to arrest
10 Plaintiff-the high number of matches of Plaintiff's identity with
11 the identity of Callejas. Since he has not presented any evidence
12 of discriminatory intent, Plaintiff has failed to present an issue
13 of fact as to whether Hobbensfeiken's actions violated the Equal
14 Protection Clause.

15 **IT IS HEREBY ORDERED** that Defendant Hoffenfeiken's Motion for
16 Summary Judgment (#29) is **GRANTED**.

17 This 23rd day of November, 2005.

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21 UNITED STATES DISTRICT JUDGE